

519.83 Exhibit D – Draft Cooperative Agreement

Agreement No. _____

COOPERATIVE AGREEMENT
BETWEEN THE
UNITED STATES OF AMERICA
COMMODITY CREDIT CORPORATION
and the
[Tribe/State/County/Local Government/Non-governmental Organization]
for the
FARMLAND PROTECTION PROGRAM

This Cooperative Agreement, made this ____ day of _____, 2001 is entered into by and between the **United States of America**, by and through the Commodity Credit Corporation (CCC) and the Natural Resources Conservation Service (NRCS) (hereinafter “the United States”), and the **[Tribe/State/County/Local Government/Non-governmental Organization]** for the implementation of the Farmland Protection Program (FPP). The CCC shall utilize the expertise and services of its various agencies of the United States Department of Agriculture, including the NRCS and the Farm Service Agency (FSA). For purposes of this Cooperative Agreement, the term “Parties” refers collectively to the United States and the **[Tribe/State/County/Local Government/Non-governmental Organization]**.

I. AUTHORITY.

This Cooperative Agreement is entered into by the United States under the authorities of the Commodity Credit Charter Act, 15 U.S.C. 714 *et seq.*; section 388 of the Federal Agriculture Improvement and Reform Act (Pub. L. 104-127, 16 U.S.C. 3830 note); the Soil Conservation and Domestic Allotment Act (Pub. L. 46, 16 U.S.C. 590a *et seq.*), and the Agricultural Risk Protection Act of 2000 (Public Law 106–224). The CCC administers the FPP under the general supervision of the Chief of the NRCS who is a Vice President of the CCC.

II. BACKGROUND AND PURPOSE.

Enacted on April 4, 1996, Section 388 of the Federal Agriculture Improvement and Reform Act authorizes the Secretary of Agriculture to purchase conservation easements or other interests in land with prime, unique, or other productive soil that is subject to a pending offer from a State or unit of local government for the purpose of protecting topsoil by limiting non-agricultural uses of the land. On June 20, 2000, the Agricultural Risk Protection Act of 2000, Subtitle B – Conservation, Section 211, provided \$10,000,000 of funds from the CCC for the FPP. The Agricultural Risk Protection Act of 2000 expanded the definition of eligible entities to include federally recognized Indian tribes (Tribe) and certain non-governmental organizations. An additional \$7.5 million has also been provided for FPP in accordance with the Conference Report on H.R. 4577, Department of Labor, Health, and Human Services, and Education and Related Agencies Appropriations (House of Representatives - December 15, 2000). This amount excludes proposals from non-governmental organizations and is dedicated only to proposals from federally recognized Indian tribes, States, and units of local government. USDA has designated up to \$5 million to be provided to State agencies that have a long and effective history of purchasing development rights on farmland. On January 22, 2001, CCC published a notice in the Federal Register requesting proposals for participation from Tribes, States, units of local government, and non-governmental organizations. See Federal Register Volume 66, Number 14, Notices Page 6566-6570.

WHEREAS, the **[Tribe/State/County/Local Government/Non-governmental Organization]** and CCC have mutual interests in preventing the conversion of agricultural lands to non-agricultural uses; and

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WHEREAS, NRCS and CCC administer the FPP; and

WHEREAS, the [Tribe/State/County/Local Government/Non-governmental Organization] administers a farmland protection program, and has pending offers for acquiring agricultural conservation easements from landowners within the [Reservation/State/County/Local jurisdiction], and the United States and the [Tribe/State/County/Local Government/Non-governmental Organization] have agreed to combine their resources to assure that such areas are protected from conversion to nonagricultural uses.

THEREFORE, the parties agree to enter into this Cooperative Agreement.

III. OBLIGATION OF FUNDS

Upon execution of this agreement, the CCC shall obligate the sum of \$ _____ for the acquisition of United States interests in conservation easements. The [State/County/Local Government/Tribe/Non-governmental Organization] must request payment of this amount in accordance with Part IV of this Cooperative Agreement before *September 30, 2003*. After this date, any remaining funds will be released from this obligation.

This Cooperative Agreement is the authorizing document that obligates CCC funds to acquire easements. The CCC's contribution for the acquisition of each conservation easement in land shall be up to but not more than 50% of the purchase price of the conservation easement, not to exceed fair market value, acquired by the [Tribe/State/County/Local Government/Non-governmental Organization]. The CCC contribution cannot be used for closing and related administrative costs incurred in acquiring the easement. Attachment A to this Cooperative Agreement specifies the CCC funds to be used within the [Reservation/State/County/Local Government jurisdiction] and includes a list with a detailed breakdown of the: (1) name and mailing address of the landowner; (2) tax map number(s) of the property; (3) number of acres to be acquired; and (4) the estimated easement value. However, nothing in this document obligates the CCC or the [Tribe/State/County/Local Government/Non-governmental Organization] to purchase all of the conservation easements or interests in the land parcels listed. There may be further modifications, additions or deletions to the list depending on the prices paid for the conservation easements, the ability to obtain good and clear title, future funding for acquisitions, etc. Additions or deletions to the list will be made with mutual agreement between the Parties to this Cooperative Agreement.

IV. PAYMENTS

The [Tribe/State/County/Local Government/Non-governmental Organization] shall notify NRCS *when the CCC funds* are to be paid. CCC funds shall be paid to the [Tribe/State/County/Local Government/Non-governmental Organization] after NRCS is notified that the conservation easement has been recorded and the [Tribe/State/County/Local Government/Non-governmental Organization] has paid the landowner(s). Where a [Tribe/State/County/Local Government/Non-governmental Organization] cannot obtain 100 percent of the funds to be paid at closing to the landowner(s) and requires NRCS to make its payment at closing rather than on a reimbursable basis, the [Tribe/State/County/Local Government/Non-governmental Organization] may request a waiver for NRCS to pay its share of the easement purchase at closing. In the instance where a waiver is requested, the [Tribe/State/County/Local Government/Non-governmental Organization] shall notify NRCS at least 60 days prior to closing. Where a waiver is requested, CCC shall make payment to an authorized closing agent. These funds will be transmitted to the Closing Agent by electronic transfer. The Closing Agent will hold the funds in escrow not to exceed 14 calendar days. Upon receipt of the funds, the closing agent will sign a payment receipt form and return it to NRCS. If interest is earned upon this money, the Closing Agent must return any interest earned on these monies to CCC. All easement deeds or individual deeds used by the [Tribe/State/County/Local Government/Non-governmental Organization] shall be approved by the NRCS and OGC Washington office or regional OGC office prior to purchase of the easement.

The [Tribe/State/County/Local Government/Non-governmental Organization] will submit Form SF-270 (Request for Advance/Reimbursement of Funds) and the information specified below to the _____ NRCS State Office. The [Tribe/State/County/Local Government/Non-governmental Organization] may submit the Form SF-270 after all the easements have been recorded and the landowner has been paid or on a quarterly basis for

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each quarter that easements have been recorded and the landowner has been paid.

At a minimum, the following information shall be included in, or attached to, the SF-270: (1) the name of the **[Tribe/State/County/Local Government/Non-governmental Organization]**; (2) this cooperative agreement number; (3) easement number; (4) total amount of dollars paid the landowner for the easement, specifying the CCC share and the non-CCC share of the easement cost; (5) term of easement; (6) acres acquired; (7) Tax Identification Number (TIN) for **[Tribe/State/County/Local Government/Non-governmental Organization]**; (8) Federal Information Processing Standards (FIPS) number for **[Tribe/State/County/Local Government/Non-governmental Organization]**; (9) Bank routing number and account number for desired deposit location; and (10) copy of the easement deed that contains the contingent right clause as described in Part V of this Agreement.

V. EASEMENT REQUIREMENTS.

A. The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall assure that conservation easements or other interests in land acquired under this agreement:

1. run with the land in perpetuity or a minimum of thirty years, in the case where an easement is acquired for a term less than perpetuity, the **[Tribe/State/County/Local Government/Non-governmental Organization]** must secure approval of the NRCS Washington Office.
2. prevent the land from being converted to nonagricultural uses;
3. provide for the management and administration of the easement or other interests in land by the **[Tribe/State/County/Local Government/Non-governmental Organization]**;
4. require management of the property in accordance with a conservation plan that is developed utilizing the standards and specifications of the NRCS field office technical guide, National Food Security Act provisions, as amended, and is approved by the Conservation District;
5. include the following “Contingent Right in the United States of America” provision where title is held by the **[Tribe/State/County/Local Government/Non-governmental Organization]**:

“In the event that the **[Tribe/State/County/Local Government/Non-governmental Organization]** fails to enforce any of the terms of this easement [or other interests in land], as determined in the sole discretion of the Secretary of the United States Department of Agriculture, the said Secretary of Agriculture and his or her successors and assigns shall have the right to enforce the terms of the easement through any and all authorities available under Federal or State law. In the event that the **[Tribe/State/County/Local Government/Non-governmental Organization]** attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests of this easement [or other interests in land] without the prior consent of the Secretary of the United States Department of Agriculture and payment of consideration to the United States, then, at the option of such Secretary, all right, title, and interest in this easement [or other interests in land] shall become vested in the UNITED STATES OF AMERICA.”

6. include signature of a responsible NRCS official on the conservation easement deed, accepting the agency's property interest in the deed.

B. Unless otherwise agreed to by the Parties, the **[Tribe/State/County/Local Government/Non-governmental Organization]** shall hold title to any conservation easement or interest in land. However, title may be held by the United States at the request of the Secretary of Agriculture upon mutual agreement of the Parties, or when the contingent right provision is activated.

VI. RESPONSIBILITIES.

A. Those of the United States —

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1. The United States, by and through the NRCS, shall provide technical and other services required to develop and implement conservation plans under this Cooperative Agreement. To ensure that the conservation plan is implemented appropriately, the NRCS will be provided the opportunity to conduct periodic field visits on lands that are enrolled in the FPP.

2. The CCC shall, subject to the availability of funds, disburse the appropriate funds to the **[Tribe/State/County/Local Government/Non-governmental Organization]** in accordance with Part III and IV of this Cooperative Agreement.

B. Those of [Tribe/State/County/Local Government/Non-governmental Organization]-

1. The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall perform necessary legal and administrative actions to ensure proper acquisition and recordation of valid easements or interests in land.

2. The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall use all awarded funds under this agreement for the acquisition of conservation easements within approved FPP areas. CCC funds shall pay for not more than 50% of the purchase price, not to exceed fair market value, of the conservation easement in land acquired.

3. The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall pay all costs of easement procurement and will operate and manage each easement in accordance with the **[Tribe/State/County/Local Government/Non-governmental Organization]** program, this Cooperative Agreement, and the FPP. The United States shall have no responsibility for the costs or management of the easements purchased by the **[Tribe/State/County/Local Government/Non-governmental Organization]**. The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall indemnify, defend, and hold the United States harmless for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the **[Tribe/State/County/Local Government/Non-governmental Organization]** in connection with the acquisition and management of the easements [or other interests in land] acquired pursuant to this Cooperative Agreement. This indemnification and hold harmless provision includes but is not limited to acts and omissions of the **[Tribe/State/County/Local Government/Non-governmental Organization]** agents, successors, assigns, employees, contractors, or lessees in connection with the acquisition and management of the easements acquired pursuant to this Cooperative Agreement which result in: (1) violations of any laws and regulations which are now or which may in the future become applicable, and including but not limited to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.*, the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.*, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601 *et seq.*, the Toxic Substances Control Act, as amended 15 U.S.C. 2601 *et seq.*, the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136 *et seq.*, and the Safe Drinking Water Act, as amended, 42 U.S.C. 300f *et seq.*; (2) judgments, claims, demands, penalties, or fees assessed against the United States; (3) costs, expenses, and damages incurred by the United States; or (4) the release or threatened release of any solid waste, hazardous waste, hazardous substance, pollutant, contaminant, oil in any form, or petroleum product into the environment.

4. Non-governmental organizations shall continue to meet the requirements specified in Section 211 of the Agricultural Risk Protection Act of 2000. The Act states that eligible organizations are “any organization that—

- (A) is organized for, and at all times since the formation of the organization has been operated principally for, 1 or more of the conservation purposes specified in clause (i), (ii), or (iii) of section 170(h) (4) (A) of the Internal Revenue Code of 1986;
- (B) is an organization described in section 501 (c) (3) of that Code that is exempt from taxation under 501 (a) of that Code;
- (C) is described in section 509 (a) (2) of that Code; or
- (D) is described in section 509(a) (3) of that Code and is controlled by an organization described in section 509 (a) (2) of that Code.”

5. The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall incorporate into each conveyance instrument in which CCC funds are used as part of the acquisition the “Contingent Right in the

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United States of America” provision described in Part V of this Cooperative Agreement, as well as the other required clauses set forth in Part V Section A5 of this Cooperative Agreement.

6. Prior to payment certification, the **[Tribe/State/County/Local Government/Non-governmental Organization]** shall ensure that all lands for which a conservation easement or other interest in land has been acquired will have a conservation plan, as described in Part V of this Cooperative Agreement.

7. The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall prohibit all non-agricultural uses of the encumbered properties, excluding recreational uses, such as hiking, hunting, fishing, boating, horseback riding that will not conflict with the intent, outlined in Section 388 of the Federal Agriculture Improvement and Reform Act of 1996 (Public L. 104–127, 16 U.S.C. 3830 note).

8. In acquiring easements and interests in land, the **[Tribe/State/County/Local Government/Non-governmental Organization]** shall ensure that the title to the lands or interests therein shall be unencumbered or, if encumbered by outstanding or reserved interests, the **[Tribe/State/County/Local Government/Non-governmental Organization]** shall ensure that any outstanding interest should be subordinate to the conservation easement. The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall assure that proper title evidence is secured and that the United States is insured for the adequacy of the title at least to the amount of the CCC price paid for the United States interest. In the event of a failure of title, the **[Tribe/State/County/Local Government/Non-governmental Organization]** will reimburse the United States for the amount paid by CCC, less any amount paid to the United States from title insurance.

9. The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall ensure that the consideration paid to any landowners for the conveyance to the **[Tribe/State/County/Local Government/Non-governmental Organization]** of any lands or interests in lands is no more than the fair market value of the land or interests conveyed. To determine fair market value an appraisal methodology consistent with the Uniform Standards of Professional Appraisals, the Uniform Appraisal Standards for Federal Land Acquisitions (Interagency Land Acquisition Conference, 1992), or other real estate valuation techniques approved and used by the state when expending state funds for land acquisition shall be used. If requested, appraisals shall be provided to NRCS. In cases where the easement acquisition involves Federal funds of more than \$250,000, an appraisal in accordance with the Uniform Standards of Professional Appraisals is required.

10. The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall certify payment(s) received by submitting a transmittal letter that references; (i) the cooperative agreement number; (ii) the easement contract number; (iii) total amount of dollars paid or to be paid to the landowner for the easement, specifying the CCC share and the non-CCC share of the easement cost; (iv) term of easement; (v) acres acquired; (vi) a copy of the recorded deed containing the contingent right clause as described in Part V of this Agreement. Certification of payment for all properties acquired must occur on or before September 30, 2003.

11. Performance Reporting— The **[Tribe/State/County/Local Government/Non-governmental Organization]** will submit an annual report of the status of easements and pending easement acquisition to CCC, or when requested by CCC or NRCS. This report format will be defined by NRCS and submitted to the United States representative for this Agreement.

VII. GENERAL PROVISIONS.

A. The period of this agreement shall be from the date of the last signature affixed hereto through September 30, 2003.

B. No assignment in whole or in part shall be made of any right or obligation under this Cooperative Agreement without the joint approval of both the United States and the **[Tribe/State/County/Local Government/Non-governmental Organization]**. Nothing herein shall preclude the United States or the **[Tribe/State/County/Local Government/Non-governmental Organization]** from entering into mutually acceptable arrangements or agreements. Such documents shall be in writing, reference this agreement, and be maintained as part of the official agreement file.

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C. This Cooperative Agreement may be amended, extended, or modified by written amendment signed by the authorized officials of the United States and the **[Tribe/State/County/Local Government/Non-governmental Organization]**.

D. This agreement may be terminated by either party hereto by a written notice to the other party at least 30 calendar days in advance of the effective date of the termination. The United States may terminate this agreement if the United States determines that the **[Tribe/State/County/Local Government/Non-governmental Organization]** has failed to comply with the provisions of this agreement. In the event that this agreement is terminated for any reason, the financial obligations of the parties will be as set forth in 7 CFR Part 1403, Part 3016 and Part 3019.

E. This Cooperative Agreement shall be enforced and interpreted in accordance with applicable Federal laws and regulations, directives, circulars, or other guidance. When signed, this Cooperative Agreement will become binding on the **[Tribe/State/County/Local Government/Non-governmental Organization]** and the United States to be administered in accordance with 7 CFR Part 3015 Uniform Federal Assistance Regulations Part 3016—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or Part 3019—Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of higher Education, Hospitals, and Other Non-Profit Organizations, as applicable.

F. As a condition of this Cooperative Agreement, the **[Tribe/State/County/Local Government/Non-governmental Organization]** assures and certifies that it is in compliance with, and will comply in the course of the agreement with the 7 CFR Part 3016—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or Part 3019—Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of higher Education, Hospitals, and Other Non-Profit Organizations, as appropriate.

G. The **[Tribe/State/County/Local Government/Non-governmental Organization]** agrees that it will comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and all requirements imposed by the Regulations of the Department of Agriculture (7 CFR Part 15), Department of Justice (28CFR Part 42 & 50) to the effect that, no person in the United States, shall, on the grounds of age, sex, disability, color, race, or national origin, be excluded from participation in, or be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant received Federal financial assistance from the Department; and hereby gives assurance that it will immediately take any measures necessary to effectuate this agreement.

H. The activities under this agreement will be in compliance with Title V of the Drug-Free Workplace Act of 1988, 41 U.S.C. 702, and 7 CFR, Part 3017, Subpart F.

I. Employees of the **[Tribe/State/County/Local Government/Non-governmental Organization]** shall not be considered as Federal employees or agents of the United States for any purpose under this agreement.

J. The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall give CCC, NRCS, or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this agreement.

K. If any recipient of Federal funds under this Cooperative Agreement materially fails to comply with the terms of this Cooperative Agreement, the United States reserves the right to wholly or partially recapture funds provided in accordance with 7 CFR Parts 1403, 3015, 3016, and 3019.

L. The **[Tribe/State/County/Local Government/Non-governmental Organization]** agrees to comply with all applicable Federal, state, and local laws.

VIII. PRINCIPAL CONTACTS.

The United States representative for this Cooperative Agreement is:

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State Conservationist
Natural Resources Conservation Service
on behalf of the Commodity Credit Corporation
Street Address
City, State Zip Code
Phone Number

The **[Tribe/State/County/Local Government/Non-governmental Organization]** representative for this Cooperative Agreement is:

Director
[Tribe/State/County/Local Government/Non-governmental Organization]
Street Address
City, State Zip Code
Phone Number

IN WITNESS WHEREOF, the following authorized representatives of the United States and the **[Tribe/State/County/Local Government/Non-governmental Organization]** have executed this Cooperative Agreement.

THE **[Tribe/State/County/Local Government/Non-governmental Organization]**

By: Director
[Tribe/State/County/Local Government/Non-governmental Organization]

UNITED STATES OF AMERICA
COMMODITY CREDIT CORPORATION

By: State Conservationist

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Attachment A

List of Pending Easement Offers

Priority	Landowner Name(s)	Parcel(s) Identification	Acres	Easement Type	Estimated Price	Fed. Share
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